

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

FEDERAL TRADE COMMISSION,

Plaintiff

v.

DIRECT MARKETING CONCEPTS, INC., et al.,

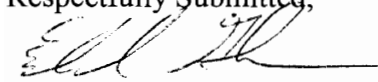
Defendants.

Civ. No. 04-11136 - GAO

**PLAINTIFF FEDERAL TRADE COMMISSION'S MEMORANDUM
REGARDING PROPOSED RECEIVER**

If the Court is inclined to appoint a receiver in this matter, plaintiff respectfully recommends that the Court appoint Craig R. Jalbert, a principal of Verdolino & Lowey, P.C., located at 124 Washington St., Foxborough, MA 02035. As indicated in the attached statement of qualifications and experience (Attachment A), Mr. Jalbert and his firm have extensive experience acting as receivers and trustees, performing complicated forensic accounting and investigation, and managing and operating businesses. As the court-appointed Receiver in this action, after completing his initial duties in connection with taking custody and control of the business, Mr. Jalbert would manage the going concern portion of the business by working with qualified local personnel. Mr. Jalbert has communicated to plaintiff that he is willing to serve as the Receiver in this matter.

Respectfully Submitted,



DANIEL KAUFMAN
KIAL S. YOUNG (BBO # 633515)
EDWARD GLENNON
Federal Trade Commission

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ATTORNEYS FOR PLAINTIFF

Dated: May 25, 2005

Attachment A

CRAIG R. JALBERT, CIRA

Principal, Verdolino & Lowey, P.C.
Foxboro, Massachusetts

CURRICULUM VITAE

EXPERIENCE

1987 to present - Verdolino & Lowey, P.C. Joined firm as Principal. Responsibilities are: business development; accounting and consulting services; business advisory services; bankruptcy matters including: taxation and accounting; valuation and insolvency; search for preference and fraudulent transactions; and, expert witness, and records reconstruction. Have been involved in over 1,250 bankruptcy cases, including 125 chapter 11 cases, since 1990.

Speaker and co-author at the 1996 Massachusetts Continuing Legal Education, Inc. (MCLE) seminar Tax Issues for Bankruptcy Lawyers and Trustees.

Co-Author of Bankruptcy Overview: Issues, Law and Policy, Third Edition (1996).

Speaker U.S. Trustee seminar July 1998 on bankruptcy taxation.

Speaker at the Bankruptcy Law Section of BBA on current tax matters November 20, 1998.

Speaker at the American Bankruptcy Institute Conference in July 2000 on the Strategic Use of Financial Statements in Bankruptcy

Co-Author Boston Bar Association Bankruptcy Law Section Newsletter The Gaps in GAAP, January 2001.

1983 to 1987 – Arthur Andersen & Co. Senior Auditor, Commercial Audit Division, Boston office. Responsible for planning, administering and executing financial statement audits and special projects for medium to large size companies. Other responsibilities included supervising and training staff accountants.

EDUCATIONAL BACKGROUND

Certified Insolvency and Restructuring Advisor (CIRA)
Bachelor of Science in Accountancy, with Honors, Boston College, 1983

Continuing Professional Education courses throughout accounting career, including courses regarding taxation, bankruptcy, insolvency and related matters.

PROFESSIONAL MEMBERSHIPS

American Bankruptcy Institute
Association of Insolvency and Restructuring Advisors
American Institute of Certified Public Accountants
Massachusetts Society of Certified Public Accountants
Association of Certified Fraud Examiners

KEITH D. LOWEY, CPA

Principal, Verdolino & Lowey, P.C.
Foxboro, Massachusetts

CURRICULUM VITAE

EXPERIENCE

1990 to present - Verdolino & Lowey, P.C. Joined firm as Principal. Responsibilities are: business development; accounting and consulting services; business advisory services; and bankruptcy matters including: taxation and accounting, valuation and insolvency, search for preference and fraudulent transactions, records reconstruction and expert witness services. Have been employed as accountants for Chapter 7 and 11 Trustees, Examiners, Debtors and Creditors' Committees; Examiner; and, qualified and testified as expert witness in approximately 1,250 cases since 1990.

Speaker at the U.S. Trustee seminar July 1998 on bankruptcy taxation.

Speaker at the American Bankruptcy Institute Conference in July 2000 on the Strategic Use of Financial Statements in Bankruptcy

Co-Author Boston Bar Association Bankruptcy Law Section Newsletter The Gaps in GAAP, January 2001.

Speaker at the MCLE seminar Litigation By The Numbers in February 2001.

Speaker at the Association of Insolvency and Restructuring Advisors Conference in June 2001 on the Rise and Fall of Dot Coms

1986 to 1990 - Stadium Management Corporation/Foxboro Stadium Associates, L.P. Controller/Chief Financial Officer responsible for all financial aspects of the Company and its subsidiaries; bank relationships; internal and external financial reporting; liaison to outside auditors; settlements with Stadium event promoters, insurance, tax compliance, employee benefits, etc. Was primary Company contact throughout its well-publicized Chapter 11 proceeding.

1983 to 1986 - Arthur Andersen & Co. Senior Auditor, Commercial Audit Division. Responsible for planning, administering and executing financial statement audits and special projects for medium to large size companies. Other responsibilities included supervising and training staff accountants.

EDUCATIONAL BACKGROUND

Certified Public Accountant, Massachusetts and Rhode Island.

Currently pursuing certification as Certified Insolvency and Reorganization Advisor (CIRA)

Bachelor of Science in Accountancy, Bentley College, 1983.

Continuing Professional Education courses throughout accounting career, including courses on various bankruptcy matters and business valuations.

PROFESSIONAL MEMBERSHIPS

American Bankruptcy Institute

American Institute of Certified Public Accountants

Association of Insolvency and Restructuring Advisors

Massachusetts Society of Certified Public Accountants

VERDOLINO & LOWEY, P.C.
Certified Public Accountants

Firm Experience

Verdolino & Lowey, P.C. (“V&L”) is organized as an accounting firm with approximately thirty-two employees concentrating in services such as: bankruptcy and insolvency; forensic accounting and records reconstruction; tax planning and compliance; management consulting and “part-time” CFO; wealth management for high net-worth individuals; and, federal and state political campaign finance reporting.

V&L and its principals have specialized in bankruptcy accounting in the areas of taxation, financial advisory, forensic accounting and records reconstruction, preference and insolvency analyses, claims reconciliation, business and investment valuations and expert witness services. In providing such services, Verdolino & Lowey, and its principals, have been appointed as: Liquidating Supervisor, Liquidating Trustee, Receiver, Assignee and Examiner; Accountants to Chapter 7 and 11 Trustees, Examiners, Creditors’ Committees, Debtors and Liquidating Supervisors; and, expert witness in over 1,250 cases since 1990, including over 125 Chapter 11 cases. V&L, and its principals, have also been appointed as Receivers, Assignee in various Assignments for the Benefit of Creditors, Liquidating Trustee, Liquidating Agent and sole officer for various companies that are liquidating and winding down their affairs.

In the past, V&L has provided various bankruptcy and wind-down services in the following select cases:

- The Firm is currently serving as Liquidating CEO in the **ACT Manufacturing, Inc.** Chapter 11 bankruptcy matter, where there was approximately \$20 million in cash at the time of the Liquidating CEO’s appointment. The Firm has identified approximately \$45 million in potential preferential transactions and approximately \$20 million in insider transactions. The Firm also assisted Counsel for the Official Committee of General Unsecured Creditors in an extensive document review concerning a potential D&O claim. From a records management standpoint, the Firm identified, inventoried and is storing over 2,000 boxes of records, as well as millions of the former Debtor’s electronic files, all of which have proved invaluable in researching potential causes of action and administering general estate issues.
- As Liquidating Supervisor in the **Olympus Healthcare Group, Inc.** bankruptcy, the Firm has been responsible for collecting and disbursing over \$10 million in cash. The firm reviewed and analyzed nearly 400 claims in that case and was able, through its counsel, to settle all disputed claims without litigation. Claims in the case totaled approximately \$50,000,000. The Firm prepared an extensive analysis of potential preferential transactions.
- As the Chapter 7 Trustee’s Accountant in **Newport Creamery, Inc.** Chapter 11 bankruptcy, assisted in operating a chain of family-style restaurants while a buyer was pursued. Reviewed the viability of the 32-store chain, recommended shutting 20 stores and successfully operated the remaining 12-store chain for a

period of three months and was ultimately able to assist the Trustee in selling the intellectual and various other personal property at a Bankruptcy Court auction. Conducted a forensic investigation involving recreating cash and other activity and investigated timing and nature of all receipts and disbursements, including numerous transfers to insiders (and their relatives) and affiliated entities. Uncovered a multi-faceted, multi-million dollar fraud scheme involving misappropriated cash, fraudulent asset transfers to insiders and related entities and suspect real estate transactions. Qualified as an expert; testified as to nature and appropriateness of numerous financial transactions and rendered an opinion as to the Debtor's insolvency as of the date of certain transactions. Currently providing litigation support services in connection with various ongoing lawsuits brought by the Chapter 7 Trustee, Andrew S. Richardson, Esq. (RI case).

- In **ServiSense.com**, a telecommunications bankruptcy where the Firm is serving as Liquidating Supervisor, V&L has successfully met the challenges posed by a company that conducted business in 48 states. Not only are withdrawal papers being filed in each state, income and sales and use tax requirements have been thoroughly researched to ensure that all of the Debtor's returns have been properly filed. The firm has prepared and filed over two-thousand sales and use and telecommunication tax returns in this case alone. Causes of action involving fraudulent conveyances identified by the Liquidating Supervisor are now pending.
- The Firm is the court-appointed Liquidating Supervisor in the **Carlson Group, Inc.** Chapter 11 bankruptcy case. Carlson was a \$300 million construction and architectural design firm that did business in approximately 15 states. The Firm has conducted large-scale claim, preference and insider analyses. In its prior role as accountant to the Official Committee of Unsecured Creditors, the Firm coordinated and mobilized a records retrieval effort at six Debtor offices scattered all over the country. Drawing on the expertise of a handful of experienced bankruptcy personnel, over 700 boxes of records were packed and shipped to the Firms' warehouse facility where they were subsequently inventoried.
- **Gitto Global Corporation** – V&L has served as forensic accountants to the examiner in this Chapter 11 bankruptcy case involving alleged pre-petition fraud in excess of \$30 million. Through its painstaking review of the Debtors' electronic and paper records, the Firm was able to identify thousands of documents indicative of a myriad of financial fraud schemes perpetrated by the Debtor's principals and a number of former employees.
- **Adam Construction Corporation, Inc.** – General contractor in the construction industry. Hired by the Debtor as an expert in litigation with the developer of several projects. Work included a forensic review of all transactions (over \$23,000,000) in three projects to determine the amount due to or from the

developer, including preparing an Expert Report and meetings with litigants for settlement purposes.

- **Anton Noll, Inc.** - Chapter 7 Trustee's Accountant. Conducted extensive forensic investigation that included re-creating cash and other activity for a two-year period for five bank accounts held in several states. Discovered numerous transfers to insiders (and their relatives) and affiliated entities amongst the plethora of monthly activity and identified \$4,000,000 in misappropriated funds. Also qualified as an expert, testified as to nature and appropriateness of many transactions and provided an opinion as to Debtor's insolvency at two different dates. Andrew S. Richardson, Esq. (RI case) is Chapter 7 Trustee.

The Firm has also served as fiduciary overseers outside of the bankruptcy arena:

- **Chestnut Fund LP/Stevin Hoover** – Keith Lowey is the Federal Court- appointed Receiver in an SEC criminal matter. Responsible for the liquidation of a \$3 million hedge fund, including the recreation of all fund activity to determine the proper accounting for the fund since its inception. Currently working with counsel to evaluate various potential claims against former Limited Partners.
- **Val's Fresh Pond Donuts, Inc.** – Craig R. Jalbert is the State Court - appointed Receiver in a stockholder dispute. Responsible for ensuring the collection and satisfaction of a judgment, including collecting and reviewing monthly financial information, collecting funds to satisfy the judgment and remitting funds to the plaintiff of the judgment.
- As Liquidating President and Treasurer of **MotherNature.com**, the Firm oversaw the orderly liquidation of a publicly-traded company that raised over \$120,000,000 from investors. Its duties in that case included arranging for a public auction of all hard assets, negotiating the sale terms of the Debtor's customer list and URL and the processing of two distributions to shareholders.
- In its capacity as Liquidating President and Treasurer of **Adero, Inc.**, a privately-owned telecommunications company that raised in excess of \$150,000,000, the Firm orchestrated the sell-off of all hard assets, paid off all of the Debtor's foreign and domestic obligations and issued distributions to preferred stockholders.

VERDOLINO & LOWEY, P.C.**Certified Public Accountants****Selected References**

Firm Name	Contact
Choate, Hall & Stewart Exchange Place 53 State Street Boston, MA 02109-2891 (617) 248-5000	Charles L. Glerum, Esq. Douglas R. Gooding, Esq. John F. Ventola, Esq.
Craig & Macauley, PC 600 Atlantic Avenue Boston, MA 02210 (617) 367-9500	William Moorman, Esq. Christopher J. Panos, Esq.
Duane, Morris, LLP One International Place, 14 th Floor Boston, MA 02110 (617) 289-9230	Paul D. Moore, Esq.
Holland & Knight, LLP 10 St. James Avenue Boston, MA 02116 (617) 523-2700	John J. Monaghan, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C. One Financial Center, 38th floor Boston, MA 02111 (617) 542-6000	Richard E. Mikels, Esq. Paul J. Ricotta, Esq. Daniel S. Bleck, Esq.
Hanify & King One Federal Street Boston, MA 02110 (617) 423-0400	Harold B. Murphy, Esq. D. Ethan Jeffery, Esq. Andrew G. Lizotte, Esq.
Mirick, O'Connell, DeMallie & Lougee 1700 BankBoston Tower 100 Front Street Worcester, MA 01608-1477 (508) 791-8500	Joseph Baldiga, Esq. Paul W. Carey, Esq. Christine Devine, Esq.

VERDOLINO & LOWEY, P.C.

Certified Public Accountants

Professional Rates -Hourly

Principals	\$315.00
Managers	\$240.00 - \$275.00
Staff	\$85.00 - \$195.00
Bookkeepers	\$75.00 - \$150.00
Clerical	\$65.00